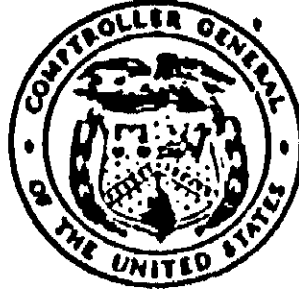


**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-209207

**DATE:** December 14, 1982

**MATTER OF:** KDH Corporation and Richard W. Bates,  
Joint Venture

**DIGEST:**

1. Alleged discussions between two firms regarding work and profit sharing do not constitute affirmative evidence that these firms have entered into a joint venture, and unless such discussions were for the purpose of restricting competition, they do not constitute collusive bidding or overcome bidder's Certificate of Independent Price Determination.
2. Alleged referral of subcontractor quotes from firm which is not bidding for prime contract to one which is competing concerns only the subcontractors and the firms involved, and has no effect on the propriety of prime contract award.
3. Contracting agencies must refer possibly collusive bids to the Attorney General. Referral is not automatic, however, since regulations require reporting only when a bid "evidences a violation" of antitrust laws.
4. When contracting agency has considered allegations of collusive bidding before making an affirmative determination of a bidder's responsibility, GAO will not review the matter unless there is evidence of fraud or bad faith on the part of contracting officials.
5. When record does not indicate that contracting officer abused his discretion in not referring an allegedly collusive bid to the Attorney General, GAO will summarily deny protest on this basis. If protester has additional evidence of collusion, it may forward this information to the Attorney General itself.

KDH Corporation and Richard W. Bates, a joint venture (KDH) protests the award of a contract for repair work by the Western Division, Naval Facilities Engineering Command, under solicitation No. N62474-81-B-8328. We deny the protest.

KDH alleges that the low bidder, Vincent C. Cramer, worked with Lazos Construction Company in the preparation of its bid and that Cramer and Lazos have agreed to share the contract work and revenues. KDH suggests Cramer and Lazos falsely represented that Cramer bid as an individual or corporation, rather than as a joint venture, and that this renders the bid nonresponsive by masking the true identity of the bidder. In addition, KDH alleges that the discussions between Cramer and Lazos violated the Certificate of Independent Price Determination.

As evidence of these allegations, KDH submits the affidavit of the general manager of the corporation, stating that in conversations with him, Cramer and Lazos confirmed that they would work together in performance of the contract, that all subcontractor bids submitted to Lazos would be transferred to and accepted by Cramer, and that Lazos, normally expected to be a bidder, did not compete because it could not obtain a bid bond.

Cramer denies the allegations and states no joint venture exists. Rather, Cramer states, its bid was prepared and submitted solely in its own name, and the award, made September 30, 1982, makes Cramer solely responsible for contract performance.

In our opinion, the alleged discussions between Cramer and Lazos regarding work and profit sharing do not constitute affirmative evidence that the two firms have entered into a joint venture--a formal, legal relationship. Moreover, such discussions, unless they were for the purpose of restricting competition, would not violate the Certificate of Independent Price Determination.

In a somewhat analogous situation, we held that when, for legitimate business reasons, two affiliated bidders jointly prepared and submitted two bids, discussions between them as to prices did not constitute collusive bidding or overcome the Certificate of Independent Price Determination, since there was no evidence that they had attempted to eliminate competition from other firms. 51 Comp. Gen. 403, 405 (1972).

Here, only Cramer submitted a bid, and there is no evidence that Cramer induced Lazos not to bid. On the contrary, KDH indicates that the reason Lazos did not bid was because it could not obtain the necessary bonding. KDH has not alleged that Cramer and Lazos engaged in price fixing with any other bidders or induced any other firms not to submit bids--actions which, as we have frequently stated, the Certificate of Independent Pricing is intended to prevent. See Aarid Van Lines, Inc., B-206080, February 4, 1982, 82-1 CPD 92, aff'd on reconsideration, March 15, 1982, 82-1 CPD 239; see also Columbus Marble Works, Inc., B-193754, August 21, 1979, 79-2 CPD 138.

As for the alleged referral of subcontractor quotes from Lazos to Cramer, KDH has neither alleged nor shown that Cramer used any of these quotes in preparing its bid. Even if this occurred, it would be of concern only to the subcontractors, to Lazos, and to Cramer, and would have no effect on the propriety of the award. 51 Comp. Gen. supra at 407-8.

Contracting agencies must refer possibly collusive bids to the Attorney General under 10 U.S.C. 2305(d)(1976) and Defense Acquisition Regulation (DAR) §§ 1-111.2 and 1-115(f) (1976 ed.). Such referral is not automatic, however; the regulations require reporting only if the Secretary concerned or his representative considers that any bid "evidences a violation" of the antitrust laws or indicates that the bidder otherwise employed noncompetitive practices. DAR § 1-111.2(a).

The Navy made no such referral here. However, before making the award, the contracting officer was required to make an affirmative determination of Cramer's responsibility, including consideration of the protest by KDH regarding the firm's affiliation with Lazos. See Dyneteria, Inc., B-186323, October 18, 1976, 76-2 CPD 338. Our Office does not review such determinations unless there is evidence of fraud or bad faith on the part of contracting officials or in other circumstances not present here. See Columbus Marble Works, Inc., supra.

We do not believe the affidavit submitted by KDH provides a basis to conclude that the contracting officer acted fraudulently or in bad faith in finding Cramer to be responsible. Nor, in view of Cramer's denial of the existence of a joint venture, can we

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conclude that the contracting officer abused his discretion by making the award or by not referring the matter to the Attorney General. Cf. Southern Maryland General Contractors, Inc., 57 Ccmp. Gen. 277 (1978), 78-1 CPD 121 (involving conflicting affidavits on collusive bidding). If the protester has additional evidence of collusion or false certification, we are aware of nothing which would prevent the protester itself forwarding this information to the Department of Justice. Columbus Marble Works, Inc., supra.

The protest is summarily denied.

*for*   
Comptroller General  
of the United States